THIRTHASAMI v. GOPALA.

Another objection urged upon us is that the debt sued for did not appear in the accounts of the mutt, and that the Judge was not entitled to pass a decree against the mutt. The absence of an entry in the accounts was only a fact in evidence, and the Judge has considered it together with the other evidence in the case in coming to a finding on the question whether the debt was contracted by Appayachari on his own account or on account of the mutt. Nor do we consider that the Judge was in error in holding that upon the facts found, the recital in document A in regard to Rs. 200 raised a presumption that "the sundry expenses" mentioned therein were those of the mutt. If the documents were executed, as is found by the Judge, on account of the mutt and by its agent, the recital was clearly *primâ facie* evidence against the principal in the circumstances of this case.

On these grounds we are of opinion that the decision of the Judge is right, and that the second appeal must be dismissed with costs. There will be two sets of costs, one in favor of the first respondent and the other in favor of the second and third respondents.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Wilkinson.

1889. March 25. May 1.

SOUTH INDIAN RAILWAY COMPANY (DEFENDANTS), APPELLANTS,

v.

RAMAKRISHNA (PLAINTIFF), RESPONDENT.*

Defamation—Expression of suspicion—Slander by a railway guard—Suit against Railway Company—De minimis non curat lex.

Suit for damages for defamation. A railway guard, having reason to suppose that a passenger travelling by a certain train from Madras to Chingleput had purchased his ticket at an intermediate station, called upon the plaintiff and others of the passengers to produce their tickets. As a reason for demanding the production of the plaintiff's ticket, he said to him in the presence of the other passengers "I suspect you are travelling with a wrong (or false) ticket," which was the defamation complained of. The guard was held to have spoken the above words *bonâ fide*:

Held, the plaintiff was not entitled to a decree for damages.

* Second Appeal No. 1742 of 1888.

SECOND APPEAL against the decree of S. T. McCarthy, District Judge of Chingleput, in appeal suit No. 295 of 1888, modifying the decree of C. Sury Ayyar, District Munsif of Chingleput, in original suit No. 217 of 1887.

Action for Rs. 250, damages for insulting and defamatory words spoken by a railway guard, in the employ of the defendant Company, of the plaintiff in the presence of various other persons whereby the plaintiff was injured in reputation, &c. No special damage was alleged.

The facts of the case appear sufficiently for the purpose of this report from the judgment of the High Court.

The District Munsif passed a decree in favor of the plaintiff for Rs. 100. On appeal the District Judge modified the decree of the District Munsif reducing the damages awarded to plaintiff to Rs. 10.

The defendant preferred this second appeal.

Mr. *Johnstone* for appellant.

The words complained of are not actionable *per se*: they only express suspicions, which appear to have had a certain justification; or at the worst they were mere vulgar abuse. *Parvathi* v. *Mannar*(1), *Dawan Singh* v. *Mahip Singh*(2), *Tozer* v. *Mashford*(3).

It would be absurd to hold the Company liable for vulgar abuse by its servants which it did not authorize. In fact the guard was acting on his own authority—*Bank of New South Wales* v. *Owston*(4), Odger on Libel, 2nd edition, pp. 411, 416.

Ramachandra Rau Saheb for respondent.

The words are actionable *per se* even judged by the English rule, because they imputed conduct punishable both under the Railway Act, Act IV of 1879, section 32, but also under the Penal Code; but in India the test is hurt to the plaintiff's feelings.

As to the liability of the defendant's Company, see *Tozer* v. *Mashford*(3), *Hanson* v. *Falle*(5) Calling for tickets was within the scope of the guard's authority: the test of the liability of the employer is—was the servant acting independently on his own behalf, or consulting the interest of the employer at the time? When the discretion vested in him by the employer is abused, the employer is liable. There is no question of express authority:

(1) I.L.R., 8 Mad., 175. (2) I.L.R., 10 All., 425.
(3) 6 Exch., 539. (4) 4 App. Cas., 270.
(5) 4 App. Cas., 247.

SOUTH INDIAN RAILWAY CO. v. RAMAKRISHNA.

if there were express authority the defendant would have been directly liable and not merely liable as an employer. *Bayley* v. *Manchester, Sheffield,* and *Lincolnshire Railway Company*(1), *Moore* v. *Metropolitan Railway Company*(2), *Limpus* v. *London General Omnibus Company*(3), *Goff* v. *Great Northern Railway Company*(4). In *Seymour* v. *Greenwood*(5) as here, the wrong was done by the servant who, in exercising the authority derived from the employer, exceeded its bounds. See Underhill on Torts, p. 51. Thus a Statute was necessary to protect the proprietors of newspapers from even criminal liability. *Dawan Singh* v. *Mahip Singh*(6) is in my favor and I only seek to establish civil liability. I rely also on *Parvathi* v. *Mannar*(7).

Mr. *Johnstone* in reply cited *Allen* v. *The London and South-Western Railway Company*(8).

COLLINS, C.J.—This is an action brought by the plaintiff against the South Indian Railway Company for defamatory words alleged to have been used by a servant of the Railway Company. The plaintiff complains that he has suffered both in mind and body by reason of the words spoken by the servant of the Company, and that although the plaintiff sent a letter through his vakil to the Railway Company, demanding Rs. 250 as compensation for loss of his reputation and for pain of mind and body, no answer was received from the Railway Company. Hence this action.

The District Munsif came to the conclusion that defamatory words had been uttered by the servant of the Company and awarded the plaintiff Rs. 100. On appeal to the District Judge he reduced the damages to Rs. 10. The Railway Company appeal. The material facts of this case are as follows:—The plaintiff was travelling by the railway from Madras to Chingleput. According to the plaintiff's evidence, a friend of his, Subramania Sastri, and a Christian College student, Raghava Rao, were in the third-class carriage with him. The District Judge finds as a fact that a ticket for Chingleput was purchased at Vandalore by some one then a passenger in the train and who had already come by it, and it is also found as a fact that the ticket so purchased was delivered up at Singaperumalkoil by some one in the same compart-

(1) L.R., 7 C.P., 415–419. (2) 8 Q.B., 36. (3) 1 H. & C., 526.
(4) 3 E. & E., 672. (5) 6 H. & N., 359. (6) I.L.R., 10 All., 425.
(7) I.L.R., 8 Mad., 175. (8) L.R., 6 Q.B., 65.

ment as the plaintiff, and it appears clear that this arrangement was made with intent to defraud the Railway Company. At Singaperumalkoil the guard of the train came to the carriage wherein the plaintiff was travelling and asked plaintiff to produce his ticket, stating that he, the guard, suspected the plaintiff of travelling with a wrong (or false) ticket; the exact words are not proved. The plaintiff produced a ticket, which was in order. These are the defamatory words complained of, and it may be taken as law in this country that if defamatory expressions are used under such circumstances as to induce in the plaintiff reasonable apprehension that his reputation has been injured and to inflict on him pain consequent on such belief, the plaintiff is entitled to recover damages without actual proof of loss sustained. The District Judge is of opinion that the guard said the words complained of without malice, but with what he calls simple carelessness.

The Counsel for the appellant contends, 1st, that the words are not actionable; 2ndly, that the guard was justified in uttering the same under the circumstances of the case; and, 3rdly, that in any event the Railway Company are not liable.

It appears to me that this action cannot be maintained. The words used by the guard of the train were not in my opinion under the circumstances of the case defamatory in the sense that an action would lie either against the guard or the Railway Company. It is clear that these were spoken *bonâ fide*. The guard was justified in requesting each passenger to produce his ticket, and he gave as a reason that he suspected passengers were travelling with wrong tickets. The words he is said to have used to the plaintiff, "I suspect you are travelling with a wrong ticket" given as a reason for demanding the production of the ticket would not induce the plaintiff reasonably to apprehend that his reputation had been injured and could not and did not inflict upon him any damage. If, as it is suggested, the guard's manner was insolent, a complaint should have been made to the Railway Company.

Upon the evidence there is no reason to believe that the plaintiff was in league with others to defraud the Railway Company, or that he knew any of the passengers were travelling with wrong tickets. I allow the appeal and set aside the decrees of both the Lower Courts and dismiss the suit, and I direct that each party pay their own costs throughout.

SOUTH INDIAN RAILWAY CO. v. RAMA-KRISHNA.

WILKINSON, J.—The facts of the case are as follows:—The plaintiff was a passenger from Madras on the South Indian Railway on the 12th March 1887. At Vandalore a ticket for Chingleput was purchased by a person who had travelled in the train from Madras to that station. As the train was starting the guard observed the said ticket being handed to some one in the same compartment as that in which plaintiff was travelling. At the next station the guard, whose suspicions had been aroused, went to the door of the carriage and demanded to see the tickets. Tickets were shown and the ticket taken at Vandalore was, the Judge finds, shown by some one in the compartment in which plaintiff was seated. An altercation ensued between plaintiff and the guard who told plaintiff he suspected him of travelling with a wrong ticket. The Lower Courts have held the Railway Company liable for the words used by the guard, being of opinion that such words were defamatory. In my judgment the words used do not amount to defamation, and, even if they did, the Railway Company could not be held responsible. It appears from the evidence of the plaintiff himself that the guard at first "politely" asked plaintiff where he was going, and that when plaintiff objected to give the information sought, the guard said that he suspected that there was something wrong with his ticket, or words to that effect. What the exact words used were, has not been found, and plaintiff himself is not prepared to swear what words the guard did use. There appears to have been an altercation, because the plaintiff refused to give the information he was bound to give, and, in the heat of the moment, the guard having grounds for suspecting that a ticket had been surreptitiously obtained at Vandalore did state that he suspected plaintiff was in possession of that ticket. It seems to me very doubtful whether under any circumstances the expression of a mere suspicion is actionable, and under the circumstances of the present case, I am of opinion that no action would lie against the guard, much less can an action against the Railway Company be maintained. Undoubtedly the Railway Company is responsible for the manner in which their servants do any act which is within the scope of their authority and is answerable for any tortious act of their servants, provided such act is not done from any caprice of the servant, but in the course of the employment. But it would be straining this principle of law to an unprecedented extent to hold that, because the guard of a train in the execution of his duty expressed a

suspicion not altogether unfounded that a passenger was travelling with a wrong ticket, the Company was liable in damages to that passenger for slander. *De minimis non curat lex*, or, as the authors of the Penal Code have expressed it, "nothing is an offence by reason that it causes or that it is intended to cause or that it is known to be likely to cause any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm." The harm, if any, caused to plaintiff's reputation by the imputation that he was travelling with wrong ticket was so slight that he might well have contented himself with reporting the guard for incivility.

I would reverse the decrees of the Courts below and dismiss the plaintiff's suit. Each party must bear his own costs throughout.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.

RAIRU NAYAR (PLAINTIFF), APPELLANT,

v.

MOIDIN AND OTHERS (DEFENDANTS), RESPONDENTS.*

1889. Aug. 20, 26.

Limitation Act—Adverse possession.

In a suit in 1887 to redeem a kanom for Rs. 62 of 1835, it appeared that in 1862 the mortgagee had received a renewal of his kanom for a larger amount, and that the defendant had produced the document of renewal in 1864 to the knowledge of the plaintiff in a suit to which the plaintiff was party:

Held, that the suit was not barred by limitation. *Madhava* v. *Narayana* (I.L.R., 9 Mad., 244) distinguished.

SECOND APPEAL against the decree of A. F. Cox, Acting District Judge of North Malabar, in appeal suit No. 263 of 1888, confirming the decree of S. Ragunatha Ayyar, District Munsif of Tellicherry, in original suit No. 482 of 1887.

Suit to redeem a kanom of Rs. 62 granted by a former karnavan of the plaintiff's tarwad to the father of defendant No. 1 in 1835. Defendant No. 1 set up a kanom interest for Rs. 192 over the property alleging that he had made a further advance of

* Second Appeal No. 1813 of 1888.